

January 4, 2011

## VIA FAX (202-457-6315) and FIRST CLASS MAIL

Benjamin J. Ginsberg, Esq. Patton Boggs 2550 M Street, NW Washington, DC 20037

RE: MUR 6267

Jonathan Paton:

Paton for Senate and Jonathan Paton, in his

official capacity as Treasurer; Jonathan Paton for Congress and

Jeffrey John Hill, in his official capacity as

Treasurer

Dear Mr. Ginsberg:

On December 22, 2010, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your clients' behalf in settlement of violations of 2 U.S.C. §§ 441i(e)(1)(A) and 432(e)(1), provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"), and 11 C.F.R. § 110.3(d) of the Commission's regulations. Accordingly, the file has been closed in this matter.

Documents related to the case will be pleced on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fad. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files.

Benjamin J. Ginsberg, Esq. MUR 6267 Page 2

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Camilla Jackson Jones
Attorney

**Enclosure Conciliation Agreement** 

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action should be taken in this matter.

## 1 BEFORE THE FEDERAL ELECTION COMMISSION 2 In the Matter of 3 MUR 6267 4 Jonathan Paton 5 6 Paton for Senate and Jonathan Paton, 7 in his official capacity as Treasurer; 8 9 Jonathan Paton for Congress and Jeffrey John Hill. in his official capacity as Treasurer 10 **CONCILIATION AGREEMENT** 11 This matter was initiated by an externally-generated complaint. The Federal 12 Election Commission ("Commission") found reason to believe that Jonathan Paton. Paton 13 14 for Senate and Jonathan Paton, in his official capacity as Treasurer (the "State 15 Committee"), and Jonathan Paton for Congress and Jeffrey John Hill, in his official 16 capacity as Treasurer (the "Federal Committee") (collectively "Respondents"), violated 17 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) when the State Committee's non-18 federal funds were used to pay for survey and polling expenditures for the Federal 19 Committee. The Commission also found reason to believe that Jonathan Paton failed to 20 file his Statement of Candidacy timely, in violation of 2 U.S.C. § 432(e)(1). 21 NOW, THEREFORE, the Commission and Respondents, having participated in 22 informal methods of conciliation prior to a finding of probable cause to believe, pursuant 23 to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows: 24 I. The Commission has jurisdiction over the Respondents and the subject 25 matter of this proceeding. 26 II. Respondents have had a reasonable opportunity to demonstrate that no

1	III. Respondents voluntarily enter into this agreement with the Commission.			
2	IV. The pertinent facts in this matter are as follows:			
3			<u>Background</u>	
4		1.	Jonathan Paton, a former Arizona State Senator, is a candidate for	
5	the U.S. House of Representatives from the 8th District of Arizona.			
6		2.	Paton for Senate is Paton's state senate campaign committee.	
7	Jonathan Paton, the State Committee's Tmasurur, is a respondent in his official capacity.			
8		3.	Jonethan Paton for Congress (the "Federal Committee"), is a	
9	political committee within the meaning of 2 U.S.C. § 431(4), and is Paton's principal			
10	authorized candidate committee. Jeffery John Hill, the Federal Committee's Treasurer, i			
11	a respondent in his official capacity.			
12		4.	On January 26, 2010, the Federal Committee filed its Statement of	
13	Organization with the Commission, which designated Jonathan Paton as the candidate.			
14	Paton had rece	ived or	made at least \$5,000 in contributions and expenditures by January	
15	26, 2010.			
16		5.	Paton did not file his Statement of Candidacy until April 1, 2010.	
17		6.	On November 23, 2009, the State Committee reported an	
18	expenditure of	\$2,709	for "Survey," and on December 14, 2009, it reported an	
19	expenditure of	<b>\$</b> 4,857	for "Vulnerability Study & Expenses." These disbursements were	
20	for expenses re	lated to	Paton's federal candidacy.	
21		7.	On February 23, 2010, the Federal Committee made a	
22	disbursement to	o the St	ate Committee in the amount of \$7,566 for items described as	
23	"polling & rese	arch."	These disbursements constituted a 100% reimbursement to the	

- 1 State Committee for the November 2009 "Survey" and December 2009 "Vulnerability
- 2 Study." The Federal Committee reported this disbursement in its April 2010 Quarterly
- 3 Report, which was filed timely.
- 4 <u>Applicable Law</u>
- 5 8. The Federal Election Campaign Act of 1971, as amended, ("the
- 6 Act") prohibits a Federal candidate, a candidate's agent, and entities established,
- 7 financed, maintained or controlled by team from soliciting, receiving, directing,
- 8 transferring, or spending funds in connection with a Federal election, unless those funds
- 9 are subject to the limitations, prohibitions, and reporting requirements of the Act. 2
- 10 U.S.C. § 441i(e)(1)(A).
- 11 9. The Act also prohibits transfers of funds or assets from a
- 12 candidate's campaign committee or account for a non-federal election to his or her
- principal campaign committee or other authorized committee for a Federal election.
- 14 11 C.F.R. § 110.3(d); see also Explanation and Justification, 57 Fed. Reg. 36,344
- 15 (August 12, 1992). If a candidate has an account for a non-federal election, those funds
- must be kept separate from federal funds and may not be transferred to his or her federal
- 17 account or used to pay for expenditures rejected to his or her federal election activities. Id.
- 18 10. The Act states that an individual becomes a candidate for Federal
- 19 office when his or her campaign either receives or makes \$5,000 in contributions or
- 20 expenditures. 2 U.S.C. § 431(2). As an exception to this general rule, an individual may
- 21 raise or spend more than \$5,000 without triggering candidate status only if he or she is
- 22 engaged in permissible "testing the waters" activities, and if the individual gives no
- indication that a decision to run has already been made. See 11 C.F.R. §§ 100.72(a) and

- 1 100.131(a). A candidate who is testing the waters is also precluded from soliciting,
- 2 receiving, or spending funds in connection with an election for Federal office, unless
- 3 those funds are subject to the limitations, prohibitions, and reporting requirements of the
- 4 Act, as set forth in 2 U.S.C. § 441i(e).
- 5 11. Once an individual who is "testing the waters" achieves candidate
- 6 status, the Act requires him to file a Statement of Candidacy within fifteen days,
- 7 designating a principal campaign committee. 2 U.S.C. § 432(e)(1). The candidate's
- 8 principal campaign committee must file a Statement of Organization no later than ten
- 9 days after it has been designated by the candidate. 2 U.S.C. § 433(a).

10 Facts

- 12. In November 2009 and December 2009, while Paton was testing 12 the waters for a federal candidacy, the State Committee made disbursements of \$2,709
- and \$4,857, respectively, for survey and polling that benefited the federal campaign.
- 14 13. The Federal Committee reimbursed the State Committee for the
- 15 survey and polling expenses on February 23, 2010, a fact which was disclosed in the
- 16 Federal Committee's April 2010 Quarterly Report.
- 17 14. The Federal Committee received or made \$5,000 in contributions
- or expenditures no later than January 26, 2010, the date on which it filed its Statement of
- 19 Organization. Although the Statement of Organization listed Jonathan Paton as the
- 20 candidate, Paton did not file his Statement of Candidacy until April 1, 2010.
- 21 15. Respondents do not dispute that the Statement of Candidacy was
- 22 filed late, in violation of 2 U.S.C. § 432(e)(1).

- l V. Respondents violated the Act in the following ways:
- 2 1. Jonathan Paton violated 2 U.S.C. § 432(e)(1) by failing to file a
- 3 Statement of Candidacy timely.
- 4 2. Jonathan Paton violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R.
- 5 § 110.3(d) by using non-federal funds to pay for expenditures in connection with an
- 6 election for federal office, thereby transferring assets from his state campaign to his
- 7 federal campaign committee.
- 8 3. Paton for Senate and Jonathan Paton, in his official capacity as
- 9 Treasurer, violated 2 U.S.C.§ 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) by using non-
- 10 federal funds to pay for expenditures in connection with an election for federal office,
- thereby transferring state campaign assets to Paton for Congress and Jeffrey John Hill, in
- 12 his official capacity as Treasurer.
- 4. Jonathan Paton for Congress and Jeffrey John Hill in his official
- 14 capacity as Treasurer, received prohibited in-kind contributions and transfers of assets
- 15 from Jonathan Paton and Paton for Senate and Jonathan Paton, in his official capacity as
- 16 Treasurer, in violation of 2 U.S.C.§ 441i(e)(1)(A) and 11 C.F.R. § 110.3(d).
- 17 VI. Respondersta will cease and desist from violating 2 U.S.C. § 441i(e)(1)(A)
- and 11 C.F.R. § 110.3(d). Jonathan Paton will cease and desist from violating 2 U.S.C.
- 19 § 432(e)(1).
- 20 VII. Respondents will pay a civil penalty of One Thousand Eight Hundred
- 21 Dollars (\$1.800), pursuant to 2 U.S.C. § 437g(a)(5)(A).
- VIII. The Commission, on request of anyone filing a complaint under
- 23 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may

1	review compliance with this agreement. If the Commission believes that this agreement					
2	or any requirement thereof has been violated, it may institute a civil action for relief in					
3	the United States District Court for the District of Columbia.					
4	IX. This agreement shall become effective as of the date that all parties hereto					
5	have executed same and the Commission has approved the entire agreement.					
6	X. Respondents shall have no more than thirty (30) days from the date this					
7	agreement becomes effective to conculy with and implement the requirements contained					
8	in this agreement and to so notify the Commission.					
9	XI. This Conciliation Agreement constitutes the entire agreement between the					
10	parties on the matters raised herein, and no other statement, promise, or agreement, either					
11	written or oral, made by either party or by agents of either party, that is not contained in					
12	this written agreement shall be enforceable.					
13						
14	FOR THE COMMISSION:					
15 16 17 18 19 20 21 22 23	Christopher Hughey Acting General Counsel  BY:   Kathleen M. Guith Acting Associate General Counsel for Enforcement					
24 25 26 27 28 29 30 31 32	Benjamin L. Ginsberg as Counsel for Jonathan Paton					

1 2 3	4	Der. 7, 2010
4	Paton for Senate and Jonathan Paton	Date
5	in his official capacity as Treasurer	
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7	0 11 0 21 60	•
8	M/ N/AU	12-7-10
9	onathan Patentor Congress and	Date
10	Jeffrey John Hill in his official capacity	
11	as Treasurer	